COLORADO SPRINGS
GAZETTE TELEGRAPH
ESTABLISHED IN 1872

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OUR VIEW

Amendment 2 gains high-court reprieve

The U.S. Supreme Court's decision to review Colorado's controversial Amendment 2 casts a long shadow of doubt on our state Supreme Court's decision last year to strike down the law as unconstitutional. Tuesday's decision means that at least four justices were unwilling to let our state Supreme Court have the final word on this divisive subject.

That in itself is good news. The Colorado Supreme Court's decision in October to strike down Amendment 2 was based on faulty reasoning and the creation of a brand new "right" that had been undiscovered until then.

If it had been allowed to go into effect, Amendment 2 would have barred the state of Colorado or any local government from imposing so-called gay rights laws. It would have prevented the government from forcing landlords, employers and others to act against their deepest moral and religious beliefs.

In striking down Amendment 2, the Colorado courts ruled that the amendment violated the equal protection clause of the U.S. Constitution because it "fenced out" homosexuals from the political process by making it more difficult to enact laws in their interest.

But this new "right" discovered by our own high court would, if upheld, cast doubt on a number of other legitimate laws that happen to affect different groups of people differently. For example, the court's new test could be used to strike down the state's constitutional prohibition of gambling (because it "fences out" gamblers and casino entrepreneurs from the process) or last year's failed constitutional proposal to impose a 50-cent-per-pack cigarette tax (because it would fence out smokers).

We hope the U.S. Supreme Court will ultimately reject the flawed reasoning of the Colorado Supreme Court and uphold Amendment 2.

Despite the hyperbole of its critics, Amendment 2 would not take away anybody's fundamental rights. The amendment would not take away anyone's right to vote, to bear arms, to speak and worship freely, to be safe from unwarranted search and seizure — or to enjoy any of the other God-given rights explicitly protected by the Constitution.

Amendment 2 would, however, limit the power of government at any level to interfere in the freedom of citizens to follow their own conscience on the issue of homosexuality. It would prevent the government from forcing citizens to make decisions that violate their fundamental beliefs.

In essence, this case is not about the morality of the homosexual lifestyle. It is about the limits of governmental power, and the ability of citizens to limit that power through the initiative process.

Opponents of Amendment 2 will be hard pressed to put a positive spin on the U.S. Supreme Court's decision to review the case. If a majority of the high court had been inclined to endorse the Colorado court rulings and drive a stake into Amendment 2, it could have done so with a terse, one-sentence decision declining to accept the case. It didn't.

Instead, the court plucked Amendment 2 out of a current batch of more than 500 appeals, rejecting all the others. In the past, according to the Colorado Attorney General's Office, the U.S. Supreme Court has reversed about two-thirds of the lower-court decisions it has decided to review. Clearly, Tuesday's decision means the odds have shifted in favor of supporters of Amendment 2 — in other words, in favor of the majority of Colorado voters.

That majority should retain the right to say no to government intrusion into yet another area of social life that should be left to individual discretion. The U.S. Supreme Court can affirm this basic right by overturning the Colorado Supreme Court's bad decision and upholding Amendment 2 as passed by a majority of Colorado voters.

Promotion goes private

More than a year ago, Colorado voters decided to end a special sales tax for the promotion of tourism in our state. Now that government funding has ended, private enterprise has already begun to pick up the slack.

For example, a private Colorado Springs company, called Colorado Reservation Service, has begun answering the state's 1-800 tourist telephone line. Under the old system, the line's cost was paid for by the special tax. But now Colorado Reservation Service has begun to answer the line. The company hopes to earn a profit from its operation through commissions for bookings from hotels and attractions.

Private industry should never expect the government to pay for any portion of its business expense — including out-of-state promotion. Promotion, like all other aspects of business, should be left to the marketplace to deliver the service where it's needed most.

LEGISLATURE

House OKs measure allowing deadly force against fleeing suspects

Critics: Proposal is irresponsible

Associated Press

DENVER — Armed residents could use the same deadly force against fleeing suspects as police under a bill given initial approval Tuesday in the state House.

The measure is expected to be up for a final vote this week.

Rep. Jeanne Faatz, R-Denver, sponsor of HB1250, told the House "the scales of justice are out of balance today," and when residents and shop owners who are held up retaliate with guns they often find themselves charged with manslaughter.

"That's what the law says, and I say the law is wrong," Faatz said.

Her bill would allow people to use deadly force against a person engaged in serious criminal activity, including shooting the perpetrator when he is fleeing if he or she has reasonable belief they have committed a crime.

Just before the Faatz bill was submitted for debate, Rep. James Congrove, R-Arvada, withdrew a similar bill from consideration and asked lawmakers to kill it and pass hers.

He made the motion in order to save time, he said.

Faatz said her bill is a "scaled-back" version of other bills. "We go back to current law," she said, "but the citizen is allowed to have some protections."

Rep. Ken Gordon, D-Denver, a lawyer, said the bill "does not have anything to do with self-defense," he said.

"The current law allows police to use deadly force, and allows you to shoot somebody who is escaping," he continued.

"Do we want people without training to do this?"

He said it is dangerous to allow residents the authority to shoot at what might be an innocent civilian.

Rep. Doug Friednash, D-Denver, also a lawyer, agreed.

"In addition to being dangerous, it is irresponsible," he said. Friednash observed that police undergo hours of training on "shoot-no shoot' situations.

Congrove supported Faatz, saying he had been a police officer for more than 10 years and found himself in a "shoot-no shoot" situation on just one occasion.

He noted a 1993 attack in which Denver resident Tom Hollar and his wife were abducted. He was murdered and she was brutally beaten and raped by two men.

"You don't want somebody like that escaping."

Rep. Diana DeGette, D-Denver, said she takes the bill and what it does very seriously.

"I think it can lead us to vigilante justice," she said.

She noted the Faatz bill says: "Any person is justified to use deadly force if they believe they (the suspects) are fleeing a crime. Police are trained," DeGette said, "lay people are not."

"We are a society of laws," she said, but "sometimes bad examples make bad law."

Faatz said if police "could be everywhere, OK. I say it's not reasonable to have taxpayers charged with assault and sentenced to jail where there is a law involved."

BRIEFING

Room rental bill to be changed: A House-passed bill that would allow innkeepers to refuse to rent rooms to unmarried couples is too broad and will be changed, the bill's Senate sponsor said Tuesday.

The Senate Business Affairs and Labor Committee approved Sen. Sally Hopper's request that it delay action on HB1083 so she can alter the measure. Hopper, R-Golden, said she hadn't realized the broad reaches of the bill.

Hopper said she plans to change the bill so it will apply only to the issue it originally targeted: minors who cause property damage.

"I want it to say if kids rent a room and can't be financially responsible, the parents or legal guardians have to pay for any damage," Hopper said.

1995 COLORADO LEGISLATIVE SESSION

House OKs free medical care measure: Patients who receive free medical care could not sue their doctors if something goes wrong under a bill approved by the Colorado House on Tuesday.

HB1255, by Rep. Phil Pankey, R-Littleton, was not debated before the final vote was cast, 38-25.

It's a version of a proposal he has tried before. Earlier bills that failed gave doctors a tax break for donated services.

House tentatively OKs tobacco measure: The House on Tuesday approved a bill making it illegal for minors to possess tobacco, despite criticism the move would "create criminals overnight."

The House narrowly approved HB1207, by Rep. Gary McPherson, R-Aurora. Under the bill, minors caught with tobacco would face a $50 fine. The bill faces a final vote in the House.

Laws in place ban youngsters from buying cigarettes and smoking on school property. HB1207, McPherson said, was requested by schools and "extends (current law) to the logical conclusion: It is also illegal to possess tobacco."

Longer rigs cleared by House: Trucking firms could deploy 75-foot rigs — 5 feet longer than now allowed — under a bill that cleared the Colorado House on Tuesday.

Rep. Vi June, D-Westminster, sponsor of HB1085, told the House the bill would make Colorado fall into line with other states that have expanded the limit.

The vote was 62-1.

Magazines can get boot, House says: Colorado consumers who wrangle with magazine distributors over publications they didn't order might have a solution in HB1039, which cleared the Colorado House on Tuesday.

Sponsored by Rep. Mary Ellen Epps, R-Colorado Springs, the bill says consumers who get unwanted magazines can simply mark "canceled" on the billing invoice and return it. The bill was approved 61-2.

Epps said magazine sales people often prey on unsuspecting consumers, particularly the elderly.

Gazette Telegraph news services

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